

**DRAFT Amendments to Chapter 6, Article IV**

**ARTICLE IV**

**Primary Caregiver Licensing**

**Sec. 6-80. Definitions**

For purposes of this Article, the following terms shall be defined as stated below:

“Local licensing authority” shall mean the person or public body designated by the Board of Trustees to review applications for medical marijuana primary caregiver licenses and monitor compliance of such licensees with the rules of this Article.

“Primary caregiver” shall have the same meanings as set forth in Article XVIII, Section 14(1) of the Colorado Constitution.

“Commercial primary caregiver” shall have the same meanings as set forth above and includes any caregiver granted documented approval by the state licensing authority to serve more than five patients.

“State health agency” shall mean the Colorado Department of Public Health and Environment or other agency or division of Colorado state government designated for the promulgation and enforcement of health rules involving the medical marijuana program registry.

“State licensing authority” shall include all state agencies requiring registration and or licensing pursuant to Article XVIII, Section 14(1) of the Colorado Constitution and the Colorado Revises Statutes (C.R.S.), as amended, including but not limited to the Departments of Public Health and Environment, and Revenue.

“State registration” shall mean having providing the requisite information to the state health agency and current listing in good standing on the State’s primary caregiver registry, and provision of significant responsibilities for managing the well-being of each patient for whom the applicant claims to be a primary caregiver.

**Sec. 6-81. Requirement, cap on total number of license available.**

(a) Whenever any person engages in serving as a primary caregiver, as designated and set out herein, such person so engaged or occupied shall be subject to the requirements of this Chapter. No one shall engage in serving as a primary caregiver without first securing a license pursuant to this Article.

(b) Only patients and licensed primary caregivers may cultivate medical marijuana within the Town of Frederick.

(c) No more than five (5) commercial primary caregiver licenses may be available and active at any one time within the Town of Frederick.

## **Sec. 6-82. Applications.**

(a) Applications for a primary caregiver license shall be made in writing to the Town Clerk on forms provided and containing such information as may be needed for proper guidance of the local licensing authority in issuing the subject license. No license shall be issued to any person unless such person is over the age of eighteen (18) years, is of good moral character and financial responsibility, and is otherwise compliant with all state licensing and registration requirements.

(b) Application requirements. An application for a license shall include the following in addition to the written application form:

(1) A map or other drawing illustrating the boundaries of the residence and any outbuildings, as well as the approximate location of each area on the premises accessible to or used for serving patients;

(2) A legal description of the approximate area and location of the residence from which the applicant will provide his or her services;

(3) A description of the provisions which have been made for cultivating, storing, and processing medical marijuana in a secured area on the premises, including segregation of products for each patient served and measures taken in preparing for and during transportation to any homebound patient; and

(4) A description of the current and anticipated volume of medical marijuana produced on the premises, whether any other plants or vegetation are also grown on the premises, and security measures taken to prevent access to inventory by those other than licensee and qualified patients and to protect the premise, inventory, fellow residents, and patients.

## **Sec. 6-83. Investigation.**

(a) Prior to issuance of a license under this Article the Town Clerk shall refer any application filed to the proper officer for inspection and investigation, who, after presentation of proper credentials, may enter the applicant's residence at all reasonable times to inspect the same, provided that, except in emergency situations, the officer shall give the owner or occupant twenty-four (24) hours' written notice. The notice shall state that the property owner or occupant has the right to refuse entry, and such refusal is not a violation of law. However, if such entry is refused, inspection may be made after issuance of a search warrant by a duly authorized magistrate, based upon probable cause, and that pending the performance and conclusions of such investigation, all activities pursuant to a license issued under this Article at the subject residence must be suspended.

(b) As a condition of issuance of a license under this Article, a licensee shall consent to random inspection and investigation of the licensed operation by the local licensing authority and its delegates, and any law enforcement agency on the notice and entry terms provided in (a) above.

#### **Sec. 6-84. Fee schedule.**

The fees for registration as a primary caregiver established by the state licensing authorities, as amended from time to time, are hereby adopted by the Town and are declared to be incorporated into the local fees. In addition to the state fee schedule, a primary caregiver applicant under this Article shall pay directly to the local licensing authority an annual license fee of two hundred fifty dollars (\$250.00) and a commercial primary caregiver applicant shall pay a fee of one thousand dollars (\$1,000.00). The fees established herein shall be paid to both the local and state licensing authorities prior to the processing or issuance of licenses or permits under this Article. These fees shall be in addition to any fees or costs incurred by the local licensing authority to provide notice and hold public hearings on an application for a license, or suspension or revocation of an issued license.

#### **Sec. 6-85. Primary caregiver licensing, state and local registration.**

(a) Each person seeking to be licensed under this Article must submit an application with the local licensing authority prior to offering medical marijuana services to any patient within the Town of Frederick. In filing such application, the applicant must affirm

(1) that he or she understands and will abide by Section 14 of Article XVIII of the state constitution, this Article, and the rules promulgated by the state health agency;

(2) that he or she is currently in compliance with Section 14 of Article XVIII of the state constitution and all regulations of the state health agency; and

(3) if the applicant is also a patient, that he or she has not designated a primary caregiver for himself or herself.

(b) At the discretion of the local licensing authority or Town Clerk, a public hearing may be held prior to issuance of any primary caregiver license.

(c) A license shall not be granted unless the applicant provides evidence of registration with all applicable state licensing authorities including designation as a primary caregiver for at least one patient on the medical marijuana program registry, and for a commercial caregiver licensee, documented approval by the state licensing authority for service to more than five patients.

(d) A non-commercial license shall not be granted, and if granted shall be immediately void, if an applicant acts as a primary caregiver for more than five (5) patients on the medical marijuana program registry at any given time, if such primary caregiver has not secured a commercial primary caregiver license, without regard to whether a state health agency has granted the licensee an exception under C.R.S. Sec. 25-1.5-106 or otherwise;

(e) The local licensing authority may deny any license application or revoke or suspend a license under this Article if the state health agency determines that the physician who diagnosed a served patient's debilitating medical condition, a patient, or the primary caregiver violated

Section 14 of Article XVIII of the state constitution, C.R.S. §25-1.5-106, the rules promulgated by the state health agency, or if the local licensing authority determines that an applicant cannot comply with or has violated any rule of this Article;

(f) A license under this Article shall be valid for one year only. It shall be the responsibility of the primary caregiver to apply to renew his or her license prior to the date on which the license expires. The local licensing authority shall develop a form for a primary caregiver to use in renewing his or her license.

**Sec. 6-86—6-89. Reserved.**

**Sec. 6-90. Penalties.**

Any person violating any provision of this Article, Article XVIII of the state constitution, Article 1.5, Title 25, C.R.S., or any of the rules and regulations authorized and adopted pursuant to such articles, upon conviction thereof, may be punished by a fine of not more than one thousand dollars (\$1,000.00) for each offense. In addition, the Court may impose additional sentencing orders as it deems reasonable and necessary, in the sole discretion of the Municipal Judge.

**Sec. 6-91. Transfers.**

No license may be transferred from one (1) person to another. No license may be transferred from one (1) residence to another, except where a licensee is permanently vacating a residence, and then only by the Town Clerk after written application therefore and the payment of a fee of two hundred dollar (\$200.00) for the transfer of such license.

**Sec. 6-92. Receipt of application for new license.**

The Town Clerk shall review any application for a new license under this Article, including all supporting documents, and advise the applicant of any additional information and/or documents that are needed to complete the application. The date on which the completed application and all necessary documents are filed with the Town Clerk and all necessary application fees are paid in full shall be deemed the date of filing of the application for the purposes of this Article.

**Sec. 6-93. Neighborhood determination.**

(a) Upon the filing of an application for a new commercial primary caregiver license or change of location, the Town Clerk shall set the boundaries of the relevant neighborhood and shall notify the applicant in writing of such boundaries. In determining the relevant neighborhood, the Town Clerk shall base the criteria on relevant factors, including but not limited to population density; the nature of the area, such as rural, residential, commercial or retail; traffic flow; access roads; geography; terrain and other barriers; and proximity to any school, library, child care center or public or private park; and any group home facility, hospital, correctional facility or public utility facility.

(b) The neighborhood established by the Town Clerk shall be deemed accepted by the applicant unless the applicant files with the Town Clerk a written objection within seven (7) days of the date of the written notification of the neighborhood determination to the applicant. If the applicant objects to the proposed neighborhood boundaries, the matter shall be scheduled for a boundary hearing before the local licensing authority.

(c) Notice for such hearing shall be sent to all residents within the designated neighborhood by the local licensing authority, at the cost of the applicant.

(d) At such hearing, the applicant may present evidence objecting to the proposed neighborhood. The local licensing authority may receive other evidence as it deems necessary. At the close of evidence, the local licensing authority shall set the boundaries of the neighborhood.

#### **Sec. 6-94. Hearings.**

No hearing on an application for a new commercial primary caregiver license, transfer or renewal of license shall proceed until a police record and background checks have been completed.

#### **Sec. 6-95. Advance notification.**

No medical marijuana may be grown or dispensed from a licensed residence unless the licensee has provided written notice to the state and local licensing authority and the Frederick Police Department at least forty-eight (48) hours prior to commencing operations thereon. Such notice shall contain the specific days and hours on which patients may enter and be served at the residence and the dates of all scheduled acquisitions by or deliveries to each patient to be served.

#### **Sec. 6-95—6-100. Reserved.**

**DRAFT Amendments to Article 3**

PERMITTED USES	A	R-E	R-1	R-2	R-3	R-MH1	R-MH2	C-D	C-N	C-C	C-H52	C-E	BLI	I	P	Additional Regulations (Apply in All Districts Unless Otherwise Stated)
Medical marijuana operations.																(20)
Medical marijuana primary caregiver (5 or fewer patients)		P	P	P	P	P	P		C		P					(21), C-H52: (22)

- (20) Ordinance #xxx bans medical marijuana operations from the Town of Frederick as permitted by State Statute 43.3xxx.

(a) Amortization of nonconforming uses.

i.

This

section shall supersede and apply in lieu of Section 3.6 of this code, regarding nonconforming uses, as to *medical marijuana operations* only.

ii.

Any

*medical marijuana operation* operating on or before December 1, 2010, that is in violation of this chapter shall be deemed a nonconforming use and must be discontinued within the time periods prescribed herein. A nonconforming *medical marijuana operation* will be permitted to continue for a period of one (1) year from December 1, 2010, with a potential operating time extension for extenuating circumstances not to go beyond July 31, 2012, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. An application for a time extension for extenuating circumstances may be granted in writing by the Board of Trustees only upon a finding of extreme hardship on the health of Registry patients then served by the *medical marijuana operation* if the operation was to close.

iii.

Notwiths

tanding the period during which nonconforming *medical marijuana operations* are permitted to continue by this section, all nonconforming *medical marijuana operations* shall acknowledge in writing the obligation to close the operation and initiate closure of the operation pursuant to this section within ninety (90) days of the effective date of the ordinance enacting this section, and shall provide evidence of compliance thereof to the Town Planning Director.

iv.

During

the amortization period, a nonconforming *medical marijuana operation* shall not be increased, enlarged, extended or altered except that the use shall become a conforming use by pursuing in good faith the requisite closure of the operation.

- (21) Development standards for primary caregiver operations:

- (a) All primary caregivers shall comply with the specific use standards for a home occupation as defined in this Article in addition to those specific standards for a primary caregiver in this article.
- (b) A primary caregiver may only provide services out of a private residence, located within a residential zone district, and no medical marijuana may be cultivated, produced, processed, or dispensed other than at the caregiver's residence, unless the caregiver has secured appropriate waivers for transportation of medical marijuana to homebound patients as issued by the state licensing authority. Copies of all such waivers shall be provided to the local licensing authority.
- (c) No more than one primary caregiver shall operate from any residence, and no primary caregiver may join together with another primary caregiver or patient for the purpose of cultivating medical marijuana.
- (d) A primary caregiver shall have his or her registry identification card in his or her possession at all times that he or she is in possession of any form of medical marijuana and produce the same upon request of a law enforcement officer or representative of the local licensing authority in order to demonstrate that the caregiver or any patient served is not in violation of the law.
- (e) A primary caregiver shall maintain with the local licensing authority a list of his or her patients, including the registry identification card number of each patient, at all times. A primary caregiver shall provide to the local licensing authority and any inquiring law enforcement agency, upon request, such list and copies of the registry identification cards for each of his or her patients.
- (f) A primary caregiver shall not have an employee, agent, or otherwise delegate to any other person any portion of his or her duties, function, or authority to provide medical marijuana to a patient nor may a caregiver engage others to assist in producing, providing, transporting, or administering medical marijuana to a patient in accordance with CRS 25-1.5-106.
- (g) A primary caregiver shall not:
  - i. Engage in the use of marijuana in a way that endangers the health and wellbeing of a person, whether the caregiver is also a patient or not.
  - ii. Engage in or allow any patient at caregiver's residence to engage in the use of marijuana in plain view of or in a place open to the general public, in the presence of any person under the age of eighteen (18), or in the presence of any person who is not also a patient.
  - iii. Operate a motor vehicle or undertake any task while under the influence of marijuana, when doing so would constitute negligence or professional malpractice.
  - iv. Possess medical marijuana or otherwise engage in the use of medical marijuana on a school bus or within one thousand feet (1,000') of a school, library, child care center or public or private park; or

two hundred fifty feet (250') of any group home facility, hospital, correctional facility, or public utility facility.

- (h) If a primary caregiver raises an exception to the state criminal laws as provided in Section 14(2)(b) or (c) of Article XVIII of the State Constitution, the caregiver waives the confidentiality of his or her records related to the condition or conditions that were the basis for the recommendation maintained by the state health agency for the medical marijuana program, and such caregiver must provide in full to the local licensing authority all records related to the subject condition upon request.

- (i) An application for primary caregiver license shall be made in writing to the Town Clerk.

i.

An

application must be signed by the person who is applying for a primary caregiver license as well as the property owner if he or she is not the license applicant. The property owner shall acknowledge on the application consent to the application for a primary caregiver license.

- (j) Amount of medical marijuana allowed. Primary caregivers are allowed no more than six marijuana plants per registered patient, with three or fewer being mature, flowering plants that are producing a usable form of marijuana.

(22)

In the C-H52 zone, primary caregivers may operate if their home is not a mixed use dwelling unit. The home must be one unit in a single-family attached dwelling subdivision.

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